

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
A.A. MEDICAL P.C.,

Plaintiff,

-against-

IRON WORKERS LOCALS 40, 361 & 417  
HEALTH FUND,

Defendant.  
-----X

Case No.:2:22-cv-01249(ENV)(LGD)

**ANSWER TO AMENDED  
COMPLAINT**

Defendant, IRON WORKERS LOCALS 40, 361 & 417 HEALTH FUND (“Health Fund” or “Defendant”), by and through its undersigned counsel, COLLERAN, O’HARA & MILLS, L.L.P., hereby responds to the allegations in Plaintiff AA Medical’s (“Plaintiff” or “AA Medical”) Amended Complaint as follows:

1. Defendant admits that Plaintiff brings the action on the grounds alleged but denies that there has been an under-reimbursement or that Plaintiff is entitled to any relief and therefore denies the allegations in Paragraph 1.
2. Defendant admits the allegations in Paragraph 2.
3. Upon information and belief, Defendant admits the allegations in Paragraph 3.
4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4.

**JURISDICTION**

5. Paragraph 5 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 5.

6. Paragraph 6 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 6.

7. Paragraph 7 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 7.

8. Paragraph 8 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 8.

### **PARTIES**

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9.

10. Defendant admits the allegations in Paragraph 10.

### **FACTUAL ALLEGATIONS**

11. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13.

14. The Explanation of Benefits speaks for itself, and no response is required from the defendant. Defendant denies any factual allegations contained in Paragraph 14.

15. Defendant denies the allegations contained in Paragraph 15.

16. Defendant denies the allegations contained in Paragraph 16.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17.

18. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23.

24. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24.

25. Paragraph 25 state a legal conclusion to which no response is required. Defendant denies any actual allegations contained in Paragraph 25.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27.

28. Defendant denies the allegations set forth in Paragraph 28. Plaintiff did not submit an appeal.

29. Defendant denies the allegations set forth in Paragraph 29. Plaintiff did not submit an appeal.

30. Defendant admits the allegations set forth in Paragraph 30.

31. Defendant admits that participants pay 40% coinsurance of the allowed amount after the deductible for Out-Of-Network procedures and any amount above the allowed amount. Defendant further admits the Plan pays 60% of the allowed amount after the deductible has been paid. Defendant further admits that co-pays are capped at \$2,000.00 and the deductible is \$500.00.

32. Defendant denies the allegations set forth in Paragraph 32. Plaintiff did not submit an appeal.

33. Defendant denies the allegations set forth in Paragraph 33.

34. Paragraph 34 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 34.

35. Defendant denies the allegations set forth in Paragraph 35.

36. Defendant denies the allegations set forth in Paragraph 36.

37. Paragraph 37 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 37.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38.

**COUNT I**

**CLAIM AGAINST DEFENDANT FOR UNPAID BENEFITS UNDER EMPLOYEE  
BENEFIT PLAN GOVERNED BY ERISA**

39. Defendant repeats, reiterates and re-alleges each and every response to Paragraphs 1 through 38 as if re-alleged herein.

40. Paragraph 40 states a legal conclusion to which no response is required. Defendant denies any factual allegations contained in Paragraph 40.

41. Defendant admits the allegations set forth in Paragraph 41.

42. Defendant admits the allegations set forth in Paragraph 42.

43. Defendant denies the allegations set forth in Paragraph 43.

**WHEREFORE**, Defendant request that this Court deny Plaintiff's prayer for relief and dismiss the Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim against Defendant upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extend that Plaintiff has failed to exhaust the administrative remedies available under the Plan.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the reimbursement sought by Plaintiff is barred by the governing contract, *i.e.*, the Health Fund's Summary Plan Description.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the amounts charged by Plaintiff for the services it provided to the Patient grossly exceed the Fair Health schedule of allowances.

Defendant reserves the right to amend its Answer to raise additional affirmative and other defenses or to pursue any available counterclaims against Plaintiff as those claims become known during this litigation.

WHEREFORE, Defendant respectfully requests that this Court dismiss the Complaint in its entirety, together with an award of costs and disbursements related to this proceeding.

Dated: Woodbury, New York  
February 17, 2023

Respectfully submitted

COLLERAN, O'HARA & MILLS L.L.P.  
*Attorneys for Defendant*

By: /s/Thomas P. Keane  
THOMAS P. KEANE  
100 Crossways Park Dr. West, Suite 200  
Woodbury, NY 11797

**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2023, Defendant IRON WORKERS LOCALS 40, 361 & 417 HEALTH FUND's Answer to Plaintiff's Amended Complaint was electronically filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, the Eastern and Southern District's Local Rules and the Eastern and Southern District Rules on Electronic Service upon the following parties and participants:

Robert J. Axelrod, Esq.  
Attorney for Plaintiff  
1465 Fifth Avenue, No. 7D  
New York, NY 10035  
(646) 986-4444  
Email: raxelrod39@gmail.com

/s/Thomas P. Keane  
THOMAS P. KEANE